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H.610

Representatives Grad of Moretown and LaLonde of South Burlington move that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4019 is amended to read:

§ 4019. FIREARMS TRANSFERS; BACKGROUND CHECKS

(a) As used in this section:

* * *

(4) “Licensed dealer” means a person issued a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

(5) “Proposed transferee” means an unlicensed person to whom a proposed transferor intends to transfer a firearm.

(6) “Proposed transferor” means an unlicensed person who intends to transfer a firearm to another unlicensed person.

(7) “Transfer” means to transfer ownership of a firearm by means of sale, trade, or gift.

(8) “Unlicensed person” means a person who has not been issued a license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C. § 923(a).

(b)(1) Except as provided in subsection (e) of this section, an unlicensed person shall not transfer a firearm to another unlicensed person unless:

1 (A) the proposed transferor and the proposed transferee physically
2 appear together with the firearm before a licensed dealer and request that the
3 licensed dealer facilitate the transfer; and

4 (B) the licensed dealer agrees to facilitate the transfer.

5 (2) A person shall not, in connection with the transfer or attempted
6 transfer of a firearm pursuant to this section, knowingly make a false statement
7 or exhibit a false identification intended to deceive a licensed dealer with
8 respect to any fact material to the transfer.

9 * * *

10 (d) A person shall not transfer a firearm to another person if:

11 (1) the transfer requires a background check under this section or under
12 Federal law; and

13 (2) the licensed dealer facilitating the transfer has not been provided
14 with a unique identification number for the transfer by the National Instant
15 Criminal Background Check System.

16 ~~(d)~~(e)(1) An unlicensed person who transfers a firearm to another
17 unlicensed person in violation of subdivision (b)(1) of this section shall be
18 imprisoned not more than one year or fined not more than \$500.00, or both.

19 (2) A person who violates subdivision (b)(2) or subsection ~~(e)~~ (d) of this
20 section shall be imprisoned not more than one year or fined not more than
21 \$500.00, or both.

1 ~~(e)~~(f) This section shall not apply to:

2 (1) the transfer of a firearm by or to a law enforcement agency;

3 (2) the transfer of a firearm by or to a law enforcement officer or
4 member of the U.S. Armed Forces acting within the course of his or her
5 official duties;

6 (3) the transfer of a firearm from one immediate family member to
7 another immediate family member; or

8 (4) a person who transfers the firearm to another person in order to
9 prevent imminent harm to any person, provided that this subdivision shall only
10 apply while the risk of imminent harm exists.

11 ~~(f)~~(g) A licensed dealer who facilitates a firearm transfer pursuant to this
12 section shall be immune from any civil or criminal liability for any actions
13 taken or omissions made when facilitating the transfer in reliance on the
14 provisions of this section. This subsection shall not apply to reckless or
15 intentional misconduct by a licensed dealer.

16 * * * Relief from Abuse Orders * * *

17 Sec. 2. 15 V.S.A. § 1103 is amended to read:

18 § 1103. REQUESTS FOR RELIEF

19 (a) Any family or household member may seek relief from abuse by
20 another family or household member on behalf of himself or herself or his or
21 her children by filing a complaint under this chapter. A minor 16 years of age

1 or older, or a minor of any age who is in a dating relationship as defined in
2 subdivision 1101(2) of this chapter, may file a complaint under this chapter
3 seeking relief on his or her own behalf. The plaintiff shall submit an affidavit
4 in support of the order.

5 * * *

6 (c)(1) The court shall make such orders as it deems necessary to protect the
7 plaintiff or the children, or both, if the court finds that the defendant has
8 abused the plaintiff, and:

9 (A) there is a danger of further abuse; or

10 (B) the defendant is currently incarcerated and has been convicted of
11 one of the following: murder, attempted murder, kidnapping, domestic assault,
12 aggravated domestic assault, sexual assault, aggravated sexual assault,
13 stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a
14 child in a sexual performance, or consenting to a sexual performance.

15 * * *

16 (3)(A) The court order shall:

17 (i) ~~Unless subdivision (4) of this subsection (c) applies,~~ require the
18 immediate relinquishment, until the expiration of the order, of all firearms that
19 are in the defendant's possession, ownership, or control or that another person
20 possesses, owns, or controls on behalf of the defendant, ~~, unless the court~~

1 makes a written finding that by clear and convincing evidence relinquishment
2 is not required to protect the safety of the victim or the public;

3 (ii) prohibit the defendant from residing at a residence where
4 firearms are present, unless the court makes a written finding that by clear
5 and convincing evidence relinquishment is not required to protect the safety of
6 the victim or the public;

7 (iii) inform the defendant that he or she is prohibited from
8 possessing firearms until the expiration of the order; and

9 (iv) if the order requires relinquishment of firearms, include all
10 available information regarding the type and location of firearms subject to the
11 order.

12 (B) The court may issue a warrant, to be served with the order, for
13 seizure of firearms from the defendant if the court finds there is probable cause
14 to believe:

15 (i) there are firearms in the defendant's possession, ownership, or
16 control at the time the order is issued or while it is in effect;

17 (ii) the defendant has committed an act of abuse; and

18 (iii) a search for and seizure of the firearms is necessary to protect
19 the life, health, or well-being of a victim on whose behalf the relief is sought.

20 (C) Firearms relinquished or seized under this subdivision (3) shall
21 be transported and stored pursuant to 20 V.S.A. § 2307.

1 Sec 3. 15 V.S.A. § 1104 is amended to read:

2 § 1104. EMERGENCY RELIEF

3 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
4 orders under this chapter may be issued ex parte, without notice to the
5 defendant, upon motion and findings by the court that the defendant has abused
6 the plaintiff or the plaintiff's children, or both. The plaintiff shall submit an
7 affidavit in support of the order. A minor 16 years of age or older, or a minor
8 of any age who is in a dating relationship as defined in subdivision 1101(2) of
9 this chapter, may seek relief on his or her own behalf. Relief under this section
10 shall be limited as follows:

11 * * *

12 (4)(A) An order issued under this section shall:

13 (i) require the immediate relinquishment, until the expiration of
14 the order, of all firearms that are in the defendant's possession, ownership, or
15 control or that another person possesses, owns, or controls on behalf of the
16 defendant, unless the court makes a written finding that by clear and
17 convincing evidence relinquishment is not required to protect the safety of the
18 victim or the public;

19 (ii) prohibit the defendant from residing at a residence where
20 firearms are present, unless the court makes a written finding that by clear and

1 convincing evidence such a prohibition is not required to protect the safety of
2 the victim or the public;

3 (iii) inform the defendant that he or she is prohibited from
4 possessing firearms until the expiration of the order; and

5 (iv) if the order requires relinquishment of firearms, include all
6 available information regarding the type and location of firearms subject to the
7 order.

8 (B) The court may issue a warrant, to be served with the order for
9 seizure of firearms from the defendant if the court finds there is probable cause
10 to believe:

11 (i) there are firearms in the defendant's possession, ownership, or
12 control at the time the order is issued or while it is in effect;

13 (ii) the defendant has committed an act of abuse; and

14 (iii) a search for and seizure of the firearms is necessary to protect
15 the life, health, or well-being of a victim on whose behalf the relief is sought.

16 (C) Firearms relinquished or seized under this subdivision (4) shall
17 be relinquished, transported, and stored pursuant to 20 V.S.A. § 2307.

18 (D) A law enforcement agency shall be immune from civil or
19 criminal liability for any damage or deterioration of firearms relinquished
20 pursuant to subdivision (A) of this subdivision (4). This subdivision (D) shall

1 ~~not apply if the damage or deterioration occurred as a result of recklessness,~~
2 ~~gross negligence, or intentional misconduct by the law enforcement agency.~~

3 * * *

4 (c)(1) Form complaints, ~~and~~ form orders, ~~and return of service forms~~ shall
5 be provided by the Court Administrator and shall be maintained by the clerks
6 of the courts.

7 (2) The Complaint for Relief from Abuse and the Affidavit in Support
8 of Relief From Abuse Complaint shall include specific provisions collecting
9 information about the defendant’s firearms, including questions that ~~require~~
10 ~~permit~~ the plaintiff to state with particularity the type and location of any
11 firearm in the defendant’s possession, ownership, or control or that another
12 person possesses, owns, or controls on behalf of the defendant.

13 * * *

14 Sec. 4. 13 V.S.A. § 4017a is added to read:

15 § 4017a. PERSONS SUBJECT TO RELIEF FROM ABUSE ORDERS;

16 PROHIBITION ON POSSESSION OF FIREARMS

17 (a) A person shall not possess, ship, transport, or receive a firearm if the
18 person is the subject of an emergency relief from abuse order issued pursuant
19 to 15 V.S.A. § 1103 or a final relief from abuse order issued pursuant to
20 15 V.S.A. § 1104.

1 (b) A person who violates this section shall be imprisoned not more than
2 two years or fined not more than \$1,000.00, or both.

3 Sec. 5. 15 V.S.A. § 1105 is amended to read:

4 § 1105. SERVICE: **WARRANTS**

5 (a) A complaint or ex parte temporary order or final order issued under this
6 chapter shall be served in accordance with the Vermont Rules of Civil
7 Procedure and may be served by any law enforcement officer. A court that
8 issues an order under this chapter during court hours shall promptly transmit
9 the order electronically or by other means to a law enforcement agency for
10 service.

11 **(b)(1) A defendant who attends a hearing held under section 1103 or 1104**
12 **of this title at which a temporary or final order under this chapter is issued and**
13 **who receives notice from the court on the record that the order has been issued**
14 **shall be deemed to have been served. A defendant notified by the court on the**
15 **record shall be required to adhere immediately to the provisions of the order.**
16 **However, even when the court has previously notified the defendant of the**
17 **order, the court shall ~~transmit the order for additional service by a law~~**
18 **enforcement agency served the order by first class mail to the defendant's last**
19 **known address.**

20 **(2)(A) A defendant who has been served with a temporary order issued**
21 **under section 1103 of this title may be served with all subsequent orders in the**

1 case by first class mail to the defendant's last known address. The defendant
2 shall inform the court of any changes to the defendant's address. The
3 subsequent order, including any changes made to the temporary order, shall be
4 effective when the subsequent order is issued.

5 (c) Abuse orders shall be served by the law enforcement agency at the
6 earliest possible time and shall take precedence over other summonses and
7 orders. Orders shall be served in a manner calculated to ensure the safety of the
8 plaintiff. Methods of service that include advance notification to the defendant
9 shall not be used. The person making service shall file a return of service with
10 the court stating the date, time, and place at which the order was delivered
11 personally to the defendant.

12 (d) If service of a notice of hearing issued under section 1103 or 1104 of
13 this title cannot be made before the scheduled hearing, the court shall continue
14 the hearing and extend the terms of the order upon request of the plaintiff for
15 such additional time as it deems necessary to achieve service on the defendant.

16 (e)(1) A complaint or ex parte temporary order or final order requiring
17 relinquishment of firearms that is served pursuant to this section shall be
18 accompanied by a return of service form on which the law enforcement officer
19 shall indicate with specificity whether firearms were relinquished by the
20 defendant.

1 (2) If the defendant does not relinquish firearms upon service of the
2 order, and the law enforcement officer has probable cause to believe the
3 defendant possesses, owns, or controls firearms, the officer shall submit the
4 return of service form to the court along with an affidavit requesting that a
5 warrant for seizure of the firearms be issued. The return of service and the
6 affidavit shall be filed with the court at the earliest possible time and shall take
7 precedence over other summonses and orders.

8 (3) If the defendant does not relinquish firearms upon service of the
9 order, and the law enforcement officer has a reasonable suspicion that the
10 defendant possesses, owns, or controls firearms, the officer shall investigate
11 the matter within 48 hours, or as soon as practicable. If the officer determines
12 that there is probable cause to believe the defendant possesses, owns, or
13 controls firearms, the officer shall submit the return of service form pursuant to
14 subdivision (2) of this subsection. If the officer does not determine that
15 probable cause exists, the return of service shall include a statement describing
16 the efforts that were made to establish probable cause during the investigation.

17 (4) The court shall issue a warrant under this subsection for seizure of
18 firearms from the defendant if the court finds there is probable cause to
19 believe:

20 (A) there are firearms in the defendant's possession, ownership, or
21 control while the order is in effect; and

1 (B) a search for and seizure of the firearms is necessary to protect the
2 life, health, or well-being of a victim on whose behalf the relief is sought.

3 (5) A law enforcement agency shall be immune from civil or criminal
4 liability for failing to learn of, locate, or seize a firearm while executing a
5 warrant issued pursuant to this subsection, or for returning a seized weapon to
6 its owner if the owner is not prohibited from owning or possessing firearms
7 under state or Federal law.

8 (6)(A) Firearms relinquished or seized pursuant to this subsection or
9 subsections 1103(c) or 1104(a) of this title shall be relinquished, transported,
10 and stored pursuant to 20 V.S.A. § 2307.

11 (B) A law enforcement agency shall be immune from civil or
12 criminal liability for any damage or deterioration of firearms relinquished
13 pursuant to this subsection or subsections 1103(c) or 1104(a) of this title. This
14 subdivision (B) shall not apply if the damage or deterioration occurred as a
15 result of recklessness, gross negligence, or intentional misconduct by the law
16 enforcement agency.

17 (f)(1) On or before January 1 of each year, any law enforcement agency
18 that has within the previous year served a temporary or final order pursuant to
19 this chapter shall report to the Department of Public Safety:

20 (A) the total number of temporary orders the agency served during
21 the previous year;

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(c) Proceedings under this chapter shall be commenced in the county where the law enforcement agency is located, the county where the family or household member or the respondent resides, or the county where the events giving rise to the petition occur.

(d) A petition or motion filed by a family or household member pursuant to subsection 4053(a) or 4054(a) of this title shall be filed during the court's regular business hours only.

Sec. 8. 13 V.S.A. § 4053 is amended to read:

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

(a) A State's Attorney ~~or~~ the Office of the Attorney General, or a family or household member may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control. The petitioner shall submit an affidavit in support of the petition.

* * *

Sec. 9. 13 V.S.A. § 4054 is amended to read:

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

(a)(1) A State's Attorney ~~or~~ the Office of the Attorney General, or a family or household member may file a motion requesting that the court issue an

1 extreme risk protection order ex parte, without notice to the respondent. A law
2 enforcement officer may notify the court that an ex parte extreme risk
3 protection order is being requested pursuant to this section, but the court shall
4 not issue the order until after the motion is submitted.

5 * * *

6 Sec. 10. 13 V.S.A. § 4055 is amended to read:

7 § 4055. TERMINATION AND RENEWAL MOTIONS

8 * * *

9 (b)(1) A State's Attorney ~~or~~ the Office of the Attorney General, or a
10 family or household member may file a motion requesting that the court renew
11 an extreme risk protection order issued under this section or section 4053 of
12 this title for an additional period of up to six months. The motion shall be
13 accompanied by an affidavit and shall be filed not more than 30 days and not
14 less than 14 days before the expiration date of the order. The motion and
15 affidavit shall comply with the requirements of subsection 4053(c) of this title,
16 and the moving party shall have the burden of proof by clear and convincing
17 evidence.

18 * * *

19 Sec. 11. 13 V.S.A. § 4057 is amended to read:

1 § 4057. PROCEDURE

2 (a) Except as otherwise specified, proceedings commenced under this
3 subchapter shall be in accordance with the Vermont Rules for Family
4 Proceedings and shall be in addition to any other available civil or criminal
5 remedies.

6 * * *

7 (d)(1) For purposes of a petition filed pursuant to this subchapter, a health
8 care provider may notify a law enforcement officer when the provider believes
9 in good faith that disclosure of the information is necessary to prevent or lessen
10 a serious and imminent threat to the health or safety of a person or the public.

11 (2) As used in this subsection:

12 (A) “Health care provider” has the same meaning as in 18 V.S.A.
13 § 9432.

14 (B) “Necessary to prevent or lessen a serious and imminent threat to
15 the health or safety of a person or the public” includes circumstances when the
16 health care provider reasonably believes that the patient poses an extreme risk
17 of causing harm to himself or herself or another person by purchasing,
18 possessing, or receiving a dangerous weapon or by having a dangerous weapon
19 within his or her custody or control.

20 * * * Conditions of Release Prior to Trial * * *

21 Sec. 12. 13 V.S.A. § 7554 is amended to read:

1 § 7554. RELEASE PRIOR TO TRIAL

2 (a) Release; conditions of release. Any person charged with an offense,
3 other than a person held without bail under section 7553 or 7553a of this title,
4 shall at his or her appearance before a judicial officer be ordered released
5 pending trial in accordance with this section.

6 * * *

7 (2) If the judicial officer determines that conditions of release imposed
8 to ensure appearance will not reasonably protect the public, the judicial officer
9 may impose in addition the least restrictive of the following conditions or the
10 least restrictive combination of the following conditions that will reasonably
11 ensure protection of the public:

12 * * *

13 (G) Require a defendant not to possess firearms or other weapons.

14 * * *

15 * * * Effective Date * * *

16 Sec. 13. EFFECTIVE DATE

17 This act shall take effect on passage.

18